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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/797,821	03/09/2004	Daniel J. Smith	25669-020 6049	
75	90 06/01/2005		EXAM	INER
Ingrid A. Beat	tie, Ph.D.		SWARTZ, R	ODNEY P
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.			ART UNIT	PAPER NUMBER
One Financial Center Boston, MA 02111			1645	
			DATE MAILED: 06/01/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Applicant(s)							
Examiner Rodney P. Swartz, Ph.D. Interview Summary Examiner Rodney P. Swartz, Ph.D. Interview Summary Interview Summary (PTO-152)		Application No.	Applicant(s)				
Rodney P. Swartz, Ph.D. - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. If the period for reply specified shows is less than thirty (30) days, a reply whitin the statutory period will expend to MONTHS from the maining date of this communication. If the period for reply specified shows is less than thirty (30) days, a reply whitin the statutory mainture of thirty (30) days will be considered timely. If the period for reply specified shows is less than thirty (30) days, a reply whitin the statutory mainture of thirty (30) days will be considered timely. If the period for reply specified shows is less than the period to the statutory period will expend the statutory will be desired. If the period for reply specified shows is less than the period to the statutory period will be statutory will be considered timely. If the period for reply specified shows is less than the period to the statutory selected timely. If the period for reply specified shows is less than the statutory period will be statutory and the statutory and the statutory selected timely. If the period for reply specified the statutory selected to this communication, even if timely filed, may reduce a reply search and the statutory selected to this communication, even if timely filed, may reduce a reply and the statutory selected to the communication, even if timely filed, may reduce a reply selected to selected to a selected the statutory selected to selected to selected to a selected the selected selected to		10/797,821	SMITH ET AL.				
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE £ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Examination of time many be are liable under the provisions of 37 CFR 1.35(b), in no event, however, may a reply be timely filled - Examination of time many be are liable under the provisions of 37 CFR 1.35(b), in no event, however, may a reply be timely filled - Examination of time many be are liable under the provisions of 37 CFR 1.35(b), in no event, however, may a reply be timely filled - If NO period for reply specified above, the maximum statutory parties will exply and will expire SIX (6) MONTHS from the mailing date of the communication. - Provision of the provision of the maximum statutory parties will exply and will explice SIX (6) MONTHS from the mailing date of the communication. - Any reply received by the Officia exit than these months after the mailing date of the communication, seven if limity filled, may retrieve any seamed patient term adjustment. See 37 CFR 1.704(b). - Status 1) Responsive to communication(s) filled on							
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This action is FINAL. 2b This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.	THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any						
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4a) Of the above claim(s) is/are withdrawn from consideration. 5) □ Claim(s) is/are allowed. 6) □ Claim(s) is/are rejected. 7) □ Claim(s) is/are objected to. 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement. Application Papers 9) □ The specification is objected to by the Examiner. 10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) □ All b) □ Some * c) □ None of: 1. □ Certified copies of the priority documents have been received. 2. □ Certified copies of the priority documents have been received in Application No 3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Disposition of Claims						
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DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to protein, classified in class 424, subclass 185.1.
 - II. Claims 15-19, 21, 22, drawn to method of immunization, classified in class 424, subclass 9.1.
- III. Claims 20, drawn to antibody, classified in class 424, subclass 130.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the protein of Invention I can be utilized *in vitro* for immunoassays.

Inventions I and III are drawn to functionally and structurally distinct molecules.

Invention I is drawn to a bacterial protein while Invention III is drawn to an antibody.

Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the antibody of Invention III can be obtained from hosts infected with bacteria.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and because while the

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searches may overlap, the searches are not coextensive, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RODNEY P SWARTZ, PH.D PRIMARY EXAMINER

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May 25, 2005